

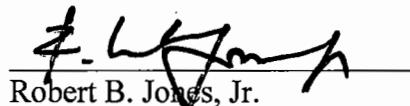
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:20-CV-85-BR

This matter is before the court on Plaintiffs' motion to compel Defendants to participate in a discovery planning conference pursuant to Fed. R. Civ. P. 26(f). [DE-39]. Defendants oppose the motion. [DE-45]. In support of the motion, Plaintiffs rely on the directive of Fed. R. Civ. P. 26(f)(1), which provides as follows: "Except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B) or when the court orders otherwise, the parties must confer as soon as practicable—and in any event at least 21 days before a scheduling conference is to be held or a scheduling order is due under Rule 16(b)." However, the rule allows the court discretion to "order otherwise," *id.*, and, in this district, the court "will routinely issue an order for a discovery plan and will thereafter enter a scheduling order. The planning meeting of counsel required by Fed. R. Civ. P. 26(f) and the report of counsel contemplated by said rule are a mandatory part of the process of formulating a scheduling order." Local Civ. R. 26.1(e)(2). The court's order for discovery plan sets the deadline by which the planning meeting of counsel required by Fed. R. Civ. P. 26(f) must occur. The court has not entered the order for discovery plan in this case and will do so in due course.

Plaintiffs also note the need to take two early depositions in this case due to the advanced age and/or perceived health issues of the witnesses. [DE-39] at 1. “A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order.” Fed. R. Civ. P. 26(d)(1); *see also* Fed. R. Civ. P. 30(a) (timing of depositions). To obtain early discovery, Plaintiffs may pursue a stipulation or court order on a proper motion after having satisfied the requirement of Local Civ. R. 7.1(c)(2) “that there has been a good faith effort to resolve discovery disputes prior to the filing of any discovery motions.” Accordingly, the motion to compel is denied.

SO ORDERED, this the 7 day of October, 2020.



Robert B. Jones, Jr.
United States Magistrate Judge